

STATE OF MICHIGAN
COURT OF APPEALS

JOHN E. SIMPSON,

Plaintiff/Counter-Defendant-
Appellant/Cross-Appellee,

v

CAROLINE SIMPSON,

Defendant/Counter-Plaintiff-
Appellee/Cross-Appellant.

UNPUBLISHED

September 12, 2006

No. 260624

Roscommon Circuit Court

LC No. 03-723911-DO

Before: Sawyer, P.J., and Fitzgerald and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right, challenging aspects of a judgment of divorce. Plaintiff challenges the award to defendant of \$68,855 of money he had hidden from defendant and the court. Defendant, on cross-appeal, challenges this Court's jurisdiction to hear plaintiff's appeal, the trial court's award of only \$7,385 in attorney fees to defendant, and the trial court's denial of case evaluation sanctions. We affirm in all respects.

As an initial matter, defendant argues that this Court does not have jurisdiction to hear plaintiff's issue on appeal because his claim of appeal was not timely filed after the trial court entered the judgment of divorce. In the interest of judicial economy, we treat plaintiff's claim of appeal as an application for leave to appeal the principal judgment and grant the application. MCR 7.205(D)(2); *Oakland Co Prosecutor v Forty-Sixth Dist Judge*, 72 Mich App 564, 567; 250 NW2d 127 (1976); *In re Morton*, 258 Mich App 507, 508 n 2; 671 NW2d 570 (2003); *Detroit v State of Michigan*, 262 Mich App 542, 545-546; 686 NW2d 514 (2004).

Turning to the merits of this appeal, plaintiff argues that the trial court improperly applied an automatic forfeiture rule to the assets he hid from defendant. We disagree. When a party hides marital assets, the trial court may, in keeping with the equities of the entire case, deem those assets forfeited to the other party. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993). But such forfeiture is not automatic; it must be based on an examination of all of the relevant facts. *Id.* at 36. "A party's attempt to conceal assets is a relevant consideration, but it is only one of the facts that the court must weigh." *Id.* The goal is to achieve equity, not to punish. *Id.*

Nothing in the record suggests that the trial court applied an automatic forfeiture rule against plaintiff for his attempt to hide the assets from defendant and the court. Instead, the trial

court applied principles of equity to the particular facts of this case, and, based on plaintiff's behavior and its affect on defendant, found it appropriate to award the concealed assets to defendant. Plaintiff's diversion of funds left defendant destitute and with a relatively meager fixed income. The court later explained that the award was expected to "provide [her] with some assets that she could use to re-establish her life," help support her in maintaining her lifestyle, and "provide her with some assets that she could liquidate, if she wanted to, or somehow use toward her costs, compensation, inconvenience, and so on." Therefore, the trial court considered the relevant principles of equity, and did not merely apply a rule of automatic forfeiture. We are not persuaded that the final award was inequitable. *Id.* at 34.

Defendant responds, however, that plaintiff's misconduct necessitated almost all of the pretrial and trial proceedings in this divorce, which was otherwise simple and straightforward with only modest assets and no children. Therefore, defendant argues that the trial court abused its discretion when it did not award her attorney fees sufficient to cover most of her costs. We disagree. We review for abuse of discretion a trial court's decision to award attorney fees. *Gates v Gates*, 256 Mich App 420, 437-438; 664 NW2d 231 (2003). Although a party should not be required to pay attorney fees out of assets relied on for support, *id.* at 438, the trial court specifically found, without any apparent error, that defendant did not require all of her awarded marital estate for support. Therefore, the preservation of support assets was not a valid basis to award defendant attorney fees.

However, attorney fees can be awarded to a party where they are necessitated by the other party's misconduct. MCR 3.206(C)(2)(b). Defendant claimed \$61,146.40 of her attorney fees (including an hourly billing rate of \$200 per hour) were directly caused by plaintiff's misconduct. However, the trial court rejected these figures. It found that plaintiff's misconduct justified between 40 and 50 hours of additional time, trouble, and expense. It set \$150 per hour as a reasonable attorney fee and then calculated a total of \$7,385 as the amount plaintiff owed defendant to cover her additional expenses necessitated by his misconduct. In its later rejection of defendant's motion for reconsideration of attorney fees, the court also noted that the majority of what defendant claimed in fees was for work that was unnecessary to effectively prosecute defendant's case. Defendant has failed to persuade us that these factual findings were erroneous or unfounded, so the trial court's award of only \$7,385 in attorney fees was not an abuse of discretion.

Finally, defendant argues that, because she accepted and plaintiff rejected the division of property suggested by the case evaluation, plaintiff should be sanctioned in the amount of the costs incurred in all of the proceedings after plaintiff's rejection. We disagree. "A trial court's decision whether to grant case-evaluation sanctions under MCR 2.403(O) presents a question of law, which this Court reviews de novo." *Campbell v Sullins*, 257 Mich App 179, 197; 667 NW2d 887 (2003). However, the verdict in this case involved the equitable division of property, and MCR 2.403(5) states:

If the verdict awards equitable relief, costs may be awarded if the court determines that

(a) taking into account both monetary relief . . . and equitable relief, the verdict is not more favorable to the rejecting party than the evaluation, and

(b) it is fair to award costs under all of the circumstances.

Here, the trial court determined that, due to the large amount of forfeited assets and plaintiff's payment of defendant's attorney fees to recover them, it would not be fair to award additional costs and more attorney fees. Defendant fails to demonstrate any error in the trial court's findings regarding the costs' fairness or in the court's discretionary decision not to award them.

Affirmed.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Peter D. O'Connell